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LEASE OF RAILROAD EQUIPMENT  
Dated as of December 13, 1973

7281

RECORDATION NO. \_\_\_\_\_ Filed & Recorded

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Between

INTERSTATE COMMERCE COMMISSION

FCB LEASING LTD., as Lessor

and

CHICAGO, MILWAUKEE, ST. PAUL AND  
PACIFIC RAILROAD COMPANY, as Lessee

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LEASE OF RAILROAD EQUIPMENT dated as of December 13, 1973, between FCB LEASING LTD., a Delaware corporation (hereinafter called the "Lessor") and CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, a Wisconsin corporation (hereinafter called the "Lessee").

w i t n e s s e t h:

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement dated as of December 13, 1973 (hereinafter called the "Security Document") with WHITEHEAD & KALES COMPANY (hereinafter called "Manufacturer"), wherein the Manufacturer has agreed to manufacture, sell and deliver to the Lessor the equipment described in Schedule A hereto (such units described in Schedule A hereto being hereinafter called the "Group A Units" or the "Group B Units", as the case may be, and all such Units, in the aggregate, being hereinafter called the "Units"); and

WHEREAS, the Manufacturer has assigned or will assign its interest in the Security Document to NATIONAL COMMERCIAL BANK AND TRUST COMPANY, as Agent (hereinafter, together with its successors and assigns, referred to as the "Vendor"); and

WHEREAS, the Lessee desires to lease all the Units of said equipment, or such lesser number as are delivered and accepted

and settled for under the Security Document on or prior to September 28, 1974 at the rentals and for the terms and upon the conditions hereinafter provided.

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Security Document, subject to all the rights and remedies of the Vendor under the Security Document:

SECTION 1. Acceptance and Delivery of Units. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Document. Upon such delivery, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a Certificate of Acceptance and Delivery in the form attached hereto as Exhibit I (hereinafter called the "Certificate of Acceptance"), stating that such Unit has been inspected and accepted on behalf of the Lessee on the date of such Certificate of Acceptance and is marked in accordance with Section 4 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

SECTION 2. Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease, 40 consecutive quarter-annual payments payable on each September 28, December 28, March 28 and June 28 in each year commencing with September 28, 1974 (or if any such date is not a business date on the next succeeding business day). For each Unit settled for on or prior to June 28, 1974 ("Group A Units") the quarterannual rent payment shall be in an amount equal to 3.32024% of the Purchase Price (as defined in the Security Document) of each Unit so delivered accepted and settled for. For each Unit settled for on or prior to September 28, 1974 ("Group B Units") the quarterannual rent payment shall be in an amount equal to 3.45050% of the Purchase Price (as defined in the Security Document) of each Unit so delivered, accepted and settled for.

For use of Group A Units after the Dates of the First Closing on December 28, 1973, the Second Closing on March 1, 1974, the Third Closing on April 26, 1974, the Fourth Closing on May 15, 1974 and until the inception of quarterly payments of portions of the Lease on June 28, 1974, Lessee will pay to Lessor on September 28, 1974, a daily rental therefor beginning after each such Closing Date for each Unit settled for at a lease factor equal to .0003689% of the Purchase Price of such Unit.

Lessee shall be entitled to a per diem abatement of rentals in an amount equal to .0003833% of the Purchase Price of each Group B Unit delivered after June 28, 1974, and settled for on or before September 28, 1974, for each day elapsed between June 28, 1974 and the Closing Date for said Group B Units, which amount shall be offset

against the first quarterly payment due hereunder for said Group B Units on September 28, 1974.

The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease in the amount provided for each Unit in Schedule A hereto (including but not limited to the payments required under Section 6 hereof) for the account of the Lessor, at NATIONAL COMMERCIAL BANK AND TRUST COMPANY, 60 State Street, Albany, New York, or at such other place as the Lessor, or its assigns pursuant to Section 18 hereof shall specify in writing on the date upon which payments are due and payable. Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Security Document due and payable on the date such payments are due hereunder and so long as no event of default under the Security Document shall have occurred and be continuing, any balance shall be paid directly to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, with respect to Units delivered after June 28, 1974, except as provided in the third paragraph of Section 2 hereof, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Document, including the Lessee's rights by subrogation under Article 7 thereof, or the Manufacturer or the Vendor or otherwise; nor,

except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

SECTION 3. Term of Lease. The term of this Lease as to each Unit shall commence on the date on which Lessee executes the Certificate of Delivery and Acceptance for such Units and the quarterly payment portion thereof shall begin on June 28, 1974, and, subject to the provisions of Sections 6, 9 and 12 hereof, shall terminate on the date on which the final quarterannual rental payment is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Security Document in its capacity as Guarantor or otherwise, are subject to the rights of the Vendor under the Security Document. If an event of default should occur under the Security Document, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under the Security Document.

SECTION 4. Identification Marks. The Lessee will cause each Unit to be numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Agent, Security Owner under a Conditional Sale Agreement to FCB LEASING LTD." or other appropriate

words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the Security Document. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Document shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

SECTION 5. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal, or foreign taxes other than any United States federal income tax (and, to the extent that the Lessor received credit therefor against its United States federal income tax liability, any foreign income tax) payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documents, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom

(except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Units; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Security Document. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Manufacturer or the Vendor or otherwise pursuant to Article 5 of the Security Document not covered by the foregoing paragraph of this Section 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 5.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the

Vendor in such units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this Section 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

Notwithstanding the foregoing provisions of this Section 5, Lessee's obligation to pay taxes under this Section 5 shall not be increased by reason of an instruction by the Lessor to make payments in any jurisdiction other than Illinois or the state of the principal place of business of the Lessor or the Vendor. Any sales tax or use tax assessed against or to be paid by the Lessor (either as Lessor or as Vendee) resulting from the transactions contemplated by the Security Document or this Lease shall constitute one of the taxes to be paid by the Lessee under the provisions of Section 5.

SECTION 6. Payment for Casualty Occurrences; Insurance.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly and fully notify the

Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor, in addition to the regular rental for such Unit, a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment of the regular rental for such Unit and the sum equal to the Casualty Value by the Lessee in respect of any Unit, the rental for such Unit shall thereafter cease to accrue, the term of this Lease as to such Unit shall terminate and except in the case of the loss, theft or complete destruction of such Unit, the Lessor shall be entitled to recover possession of such Unit.

The Casualty Value of each Unit as of any rental payment date shall be determined as of the date as provided herein equal to that percentage of the acquisition cost to the Lessor of such Unit as set forth below.

#### MILWAUKEE ROAD AUTO RACKS

<u>In</u> <u>Addition to</u> <u>Payment #</u>	<u>Casualty</u> <u>Payment</u> <u>As a %</u> <u>of Cost</u>	<u>In</u> <u>Addition to</u> <u>Payment #</u>	<u>Casualty</u> <u>Payment</u> <u>as a %</u> <u>of Cost</u>
0	103.5	21	66.6
1	103.6	22	64.5
2	103.0	23	62.3
3	102.3	24	60.1
4	101.6	25	57.9
5	100.7	26	55.7
6	99.7	27	53.4

<u>In</u> <u>Addition to</u> <u>Payment #</u>	<u>Casualty</u> <u>Payment</u> <u>As a %</u> <u>of Cost</u>	<u>In</u> <u>Addition to</u> <u>Payment #</u>	<u>Casualty</u> <u>Payment</u> <u>as a %</u> <u>of Cost</u>
7	98.7	28	51.0
8	97.6	29	43.9
9	96.4	30	41.5
10	95.1	31	39.0
11	93.7	32	36.5
12	92.3	33	34.0
13	86.0	34	31.4
14	84.4	35	28.8
15	82.7	36	26.1
16	81.0	37	23.4
17	79.2	38	20.6
18	77.2	39	17.8
19	75.3	40	15.0
20	75.3		

Except as hereinabove in this Section 6 provided, the Lessee shall not be released from its obligation hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained customary insurance in respect of the Units at the time subject hereto, in amounts and against risks approved in writing by the Lessor and the benefits thereof shall be payable as provided in the Security Document and to furnish appropriate evidence of such insurance coverage upon request of the Lessor. Any damages receivable from others, any condemnation payments and any net insurance proceeds in respect of insurance carried by the Lessee

received by the Lessor in respect of Units suffering a Casualty Occurrence (all hereinafter collectively referred to as "Recoveries") shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this Section 6. The excess of such damages received from other insurance proceeds or condemnation payments, if any, after deduction of such payments received from the Lessee in respect of Casualty Occurrences, shall belong to the Lessor. If the Lessor shall receive any such Recoveries after the Lessee shall have made payments pursuant to this Section 6 without deduction for such Recoveries, the Lessor shall pay such Recoveries to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by Lessee and any balance of such Recoveries shall remain the property of the Lessor. In the event of the loss, theft, irreparable damage or complete destruction of such Unit, the Lessee shall also pay the Lessor the salvage value of such Unit which will be based upon its net scrap value, computed at the current quoted price per gross ton of number 1 railroad heavy melting steel scrap at Chicago, Illinois, on the date of the Casualty Occurrence, less an allowance of \$6.00 per gross ton for dismantling such Unit. Upon such payment of the salvage value of such Unit, the title to such Unit, subject to the rights of the Vendor under the Security Document shall pass to and vest in the Lessee.

All proceeds of insurance received by the Lessor in respect of insurance carried on any Unit or Units not suffering

a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

SECTION 7. Annual Reports. On or before March 31 in each year, commencing with the calendar year 1974, the Lessee will furnish to the Lessor and the Vendor certified financial statements as of December 31 including a Balance Sheet and Income Statement, Form A as filed with the ICC, and an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Document, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by Section 4 hereof and Article 9 of the Security Document have been preserved or replaced. The Lessor shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

SECTION 8. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification. THE LESSOR MAKES

NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE: but the Lessor hereby irrevocably appoints and constitutes the Lessee and its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have, as Vendee, under the provisions of Article 13 of the Security Document. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department

of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power of jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units and in the event that such laws or rules require any alteration of any Unit in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Document.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

Any and all additions to any Unit and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from

any lien, charge, security interest or encumbrance (except for those created by the Security Document) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Security Document or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, attachment, detachment, or other separation from the railroad car to which it is attached, condition, purchase, delivery, rejection, storage or return of any Unit, resulting in damage to property or injury or death to any person, except as otherwise provided in Section 15 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority

by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

SECTION 9. Default. If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur and be continuing:

A. default shall be made in payment of any part of the rental provided in Section 2 hereof;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Document and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder

or under the Security Document under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Security Document), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Security Document shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under

the Security Documents and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and detach or otherwise separate the Units from the railroad cars to which they are attached, take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, or any party having a legal interest in the railroad cars to which the Units are attached,

to use the Units for any purpose whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded quarter-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and (iii) an amount equal to the sum payable under the provisions of Section 16 hereof upon the loss of any portion of the 7% Investment Tax Credit (hereinafter called the Investment Credit) with respect to the Purchase Price of the Units pursuant

to Section 38 and related sections of the Internal Revenue Code of 1954, as amended, lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in Section 16 or any other provision of the Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as provided in Section 16 to the Lessor due to the unavailability of the maximum depreciation deduction with respect to a Unit authorized under Section 167 of the Internal Revenue Code utilizing a life which is two years in excess of the original Lease term based upon 100% of the cost of each Unit and no salvage value and any method or combination of methods allowable for computing depreciation under the Internal Revenue Code which consistently applied for Federal Income Tax purposes will result in the maximum depreciation deduction in any one year over the useful life of each Unit, (hereinafter called the Depreciation Deduction) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in Section 16 or any other provision of this Lease, the termination of this Lease, the Lessee's loss of the right to use such Unit, or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default.

Anything in this Section 9 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition

or agreement on the part of the Lessee other than the loss of the units as described in Section 6 which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of all or any portion of the Investment Credit or Depreciation Deduction or both shall be for all purposes of this Lease deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of the Investment Credit or Depreciation Deduction or both in respect of such Unit, agree to pay to the Lessor the revised rental in respect of such Unit, determined as provided in Section 16 hereof.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by Law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon continuation or recurrence of any such contingencies or similar contingencies.

SECTION 10. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 9 hereof, the Lessee shall forthwith deliver possession of the units to the Lessor. For the purpose of delivering possession of any unit or units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. detach, or otherwise separate the units from the Railroad cars to which they are attached, and assemble them for return to Lessor,

B. forthwith place such Units upon such storage tracks or in such other storage facility of the Lessee in such fashion as the Lessor reasonably may designate;

C. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

D. transport the same to any place on the lines of

the railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor.

The detachment, separation, assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to detach, separate, assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

SECTION 11. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor

without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under Sections 5, 6 and 9 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively). Whenever the term Lessor is used in this Lease it shall apply and refer to each such assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease or under the Security Document in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Document, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises.

The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease or under the Security Document in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connection with other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease and the Security Document; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this Section 11 shall be deemed to restrict

the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Security Document) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger or consolidation, be in default under any provisions of this Lease. Lessee shall give Lessor prompt notice of any such transfer or assignment of its leasehold interest as herein permitted at Lessor's address as provided in Section 18.

The Lessor shall have the right to declare this Lease terminated in case of any unauthorized assignment or transfer of the Lessee's rights hereunder or in case of any unauthorized transfer or sublease of any of the Units.

The Lessee agrees not to use or permit the use of any Units in any jurisdictions in which the security title of the Vendor or the title of the Lessor have not been effectively protected.

SECTION 12. Purchase and Renewal Options. Provided that this Lease has not been earlier terminated and the Lessee

is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this lease, mutually agreed upon by Lessor and Lessee in an amount equal to the "Fair Rental Value" of such Units, and (b) to purchase all, but not fewer than all, the Units covered by this Lease at the end of the original or any extended term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. Fair Rental Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee-user (other than a lessee-user currently in possession) and an informed and willing Lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or Fair Rental Value of the Units such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term "Appraiser" shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

Upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and the Security Document and to transfer title thereto to the Lessee or such assignee or nominee, in such

form as may reasonably be requested by the Lessee, all at the Lessee's expense.

SECTION 13. Return of Units Upon Expiration of Term.

As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is sold to the Lessee) at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months. At Lessor's request and direction and at Lessee's cost, expense and risk, Lessee will transport the same, at any time within such three month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The detachment, separation, assembling, delivery, storage and transporting of the Units as provided herein are of the essence of this Lease, and

upon any application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to detach, separate assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; provided, however, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to Section 6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

SECTION 14. Opinion of Counsel. On each Closing Date (as defined in the Security Document), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the

Lessee addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same) with adequate corporate power to enter into the Security Documents and this Lease;

B. the Security Document and this Lease have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee enforceable in accordance with their respective terms;

C. the Security Document (and the assignment thereof to the Vendor) and this Lease have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and in the appropriate office(s) pursuant to Article 9 of the Uniform Commercial Code and such filings and recordations will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of the Security Document or this Lease;

E. the entering into and performance of the Security Document or this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or Lessor's right, title and interest therein; provided, however, that such liens may attach to the rights of the Lessee hereunder in and to the units.

SECTION 15. Recording; Expenses. Prior to the First Closing Date, the Lessee will cause this Lease, the Security Document and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and in the appropriate office(s) according to Article 9 of the Uniform Commercial Code. The Lessee will undertake the filing, registration, deposit, and recordings required of the Lessor under the Security Document and will from time to time do and perform any other act and will execute, acknowledge deliver, file, register, record (and will refile

register, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Document or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Document shall be filed and recorded with the Interstate Commerce Commission and at the appropriate Uniform Commercial Code filing office(s) prior to the delivery and acceptance hereunder of any unit.

Prior to the subsequent Closing Dates, Lessee shall file whatever amendments or supplements which may be required in accordance with Section 20c of the Interstate Commerce Act and Article 9 of the Uniform Commercial Code to effect a proper security interest in the Units to be delivered and accepted on the subsequent Closing Dates.

The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

SECTION 16. Federal Income Taxes. The Lessor, as the owner of the units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of the property, including (without limitation) an allowance for the Investment Credit and the Depreciation Deduction (each as defined in Section 9 of this Lease) with respect to the units to the extent permissible under the Code.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as are reasonably retained in the normal course of business sufficient to enable Lessor to determine whether it is entitled to the full benefit of the Investment Credit and the Depreciation Deduction with respect to the Units.

The Lessee represents and warrants that (i) none of the Units constitutes property the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time the Lessor becomes the owner of the Units the Units

will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude the original use of such property within the meaning of Section 48(b) of the Code and 167(c)(2) of the Code from commencing with the Lessor and (iii) the Lessee will not at any time during the terms of this Lease, use, or fail to use any unit in such a way as to disqualify it as "Section 38 property" within the meaning of Section 48(a) of the Code.

In the event that the Investment Credit or any part thereof, allowed by Section 38 and related Sections of the Internal Revenue Code of 1954, as now in effect, is lost to the Lessor with respect to any Unit either (a) because any Unit shall be used or operated during the term or prior to the term of this Lease by the Lessee, any sublessee from the Lessee, any agency of the United States Government, or any person, corporation, association or other entity, (b) because of any action or omission by the Lessee, any sublessee from the Lessee, any agency of the United States Government, or any person, corporation, association or other entity, (c) because the right to use any Unit shall have been or shall be transferred, or (d) if prior to the Closing Date specified in the Finance Agreement there shall be a change in existing federal tax statutes, then the Lessee shall pay to the Lessor as "Liquidated Damages" (for the loss of a bargain and not as a penalty) an amount equal to the sum of:

(1) the quotient of (i) the difference between (a) 7% of the Lessor's qualified investment in the Unit, (or the total Investment Credit previously allowed to the Lessor (before taking into account any limitation on the amount of such credit based upon the Lessor's Federal Income Tax liability), (b) the Investment Credit with respect to the Unit which is allowed plus the amount of any federal tax penalties attributable to any act or omission of the Lessee required to be paid by the Lessor and (ii) that percentage which is the difference between (a) 100% and (b) the sum of (x) the highest effective federal income tax and/or excess profits tax rate generally applicable to domestic corporations (including therein the effect of any applicable surtax, surcharge and/or any other federal tax or charges related to net income or excess profits, or related to any tax on net income or excess profits) for the taxable year of the Lessor in which the payment of liquidated damages are herein required (hereinafter referred to as the "federal tax rate") plus (y) the highest effective generally applicable rate of tax imposed by the State of Massachusetts on corporate net income and/or excess profits for the taxable year of the Lessor in which the payment of Liquidated Damages are herein required multiplied by that percentage which is the difference between 100% and the federal tax rate for such year, plus

(2) the amount of any tax deficiency interest which is required to be paid by the Lessor and is attributable to the period prior to the Lessee's payment to the Lessor of the Liquidated Damages.

Provided, however, the Lessee shall not be required by the terms hereof to indemnify the Lessor for the loss of the Investment Credit where there has been a Casualty Occurrence and where the Lessee has paid in full the casualty value for the Unit, but in that event the Lessee shall pay to the Lessor any amounts required to be paid with respect to any penalty or interest which may be assessed against the Lessor as stated above.

In the event that the Depreciation or any part thereof, allowed by Section 167 and related Sections of the Internal Revenue Code of 1954, as now in effect, is lost to the Lessor with respect to any Unit either (a) because any Unit thereof shall be used or operated during the term or prior to the term of this Lease by the Lessee, any sublessee from the Lessee, any agency of the United States Government, or any person, corporation, association or other entity, (b) because of any action or omission by the Lessee, any sublessee from the Lessee, any agency of the United States Government, or any person, corporation, association or other entity, (c) because the right to use the Unit or any item thereof shall have been or shall be transferred, or (d) if prior to the Closing Dates specified in the Finance Agreement there shall have been enacted any amendment to the Internal Revenue Code of 1954 which would operate to reduce or eliminate the Depreciation Deduction, then the rental rate applicable to such Unit set forth in Section 2 of this Lease shall, on and after the next succeeding rental date after written notice to

the Lessee by the Lessor of the occurrence of any such event, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net rate of return over the term of the Lease in respect of such Unit to equal the net rate of return that would have been available if such event had not occurred and the Lessee shall forthwith pay to the Lessor the amount of any interest and a sum which after deduction required to be paid by Lessor in respect to the receipt thereof under the laws of the United States equal to any penalty which may be assessed by the United States against the Lessor attributable to the occurrence of such event and which has been paid by the Lessor. The Lessee shall not be required to indemnify the Lessor in accordance with the foregoing for the Depreciation Deduction where there has been a Casualty Occurrence and where the Lessee has paid in full the casualty value for the Unit, but in that event shall pay to the Lessor any amounts required to be paid with respect to any penalty or interest which may be assessed against the Lessor as stated above.

In the event a claim shall be made by the Internal Revenue Service with respect to the disallowance of the Lessor's Investment Credit or Depreciation Deduction in respect of any Unit, the Lessor agrees to take such action in connection with contesting such claim as the Lessee shall reasonably request from time to time, provided that: (1) within 30 days after notice by the Lessor to the Lessee of such claim, the Lessee shall make request that such claim be contested; (ii) the Lessor, at its

sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of such claim and may at its sole option, either pay the tax claimed and sue for a refund in the appropriate United States District Court and/or the United States Court of Claims, as the Lessor shall elect, or contest such claim in the Tax Court of the United States, considering, however, in good faith such request as the Lessee shall make concerning the most appropriate forum in which to proceed; (iii) prior to taking such action, the Lessee shall have furnished the Lessor with an opinion of independent tax counsel satisfactory to the Lessor to the effect that a meritorious defense exists to such claim; and (iv) the Lessee shall have indemnified the Lessor in a manner satisfactory to it for any liability or loss which the Lessor may incur as the result of contesting such claim and shall have agreed to pay the Lessor on demand all costs and expenses which the Lessor may incur in connection with contesting such claim, including, without limitation (a) reasonable attorneys' and accountants' fees and disbursements and (b) the amount of any interest or penalty which may ultimately be payable to the United States Government as the result of contesting such claim, and the Lessee shall have furnished reasonable security for such indemnification as may be required. In the case of any such claim by the Internal Revenue Service referred to above, the Lessor agrees promptly to notify the Lessee in writing of such claim and agrees not to make payment of the tax claimed for at least 30 days after the giving of such notice and agrees

to give to the Lessee any relevant information relating to such claim which may be particularly within the knowledge of the Lessor, and shall otherwise cooperate with the Lessee in good faith in order to effectively contest any such claim. The Lessor will not agree to the release, compromise or settlement of any action or proceeding taken in accordance with this Section 16 by the Lessor without the prior written consent of the Lessee.

If the Lessor's right to claim such portion of the Investment Credit with respect to a Unit, which was not claimed or was disallowed, shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, or if the Lessor shall release, waive, compromise or settle any claim without the written consent of the Lessee (either event hereinafter called a "final settlement"), then, on the next succeeding rental payment date thereafter, or after such judgment or decree shall have become final, as the case may be, the Lessor shall reimburse Lessee in an amount equal to:

(1) the Liquidated Damages, as above defined, (other than the amount representing the interest assessed against and paid by the Lessor, which has not been reimbursed to Lessor by Lessee) paid by the Lessee which are attributable to the Investment Credit allowed as a result of such final settlement; plus

(2) interest from the date the liquidated damages are paid to the Lessor at the rate of six percent (6%) per annum on the Investment Credit allowed as a result of such final settlement.

If the Lessor's right to claim all or any part of the full Depreciation Deduction with respect to a Unit, which was not claimed or was disallowed, shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, or if the Lessor shall release, waive, compromise or settle any claim without the written consent of the Lessee (both events hereinafter called a "Final Settlement"), then, on the next succeeding rental payment date thereafter, or after such judgment or decree shall have become final, as the case may be, the rental rate in respect of such Unit shall be adjusted by such an amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net rate of return over the remaining term of the lease in respect of such Unit to equal the net rate of return that would have been available if such final settlement had not occurred and the Lessor shall forthwith upon demand of the Lessee reimburse Lessee in an amount equal to the excess, if any, of (i) the sum of (A) the difference between the increased rental paid by the Lessee with respect to such Unit pursuant to the fifth paragraph of this Section 16 and the rental rate applicable to such Unit pursuant to this Paragraph and (B) any interest paid by the Lessee to the Lessor pursuant to the fifth paragraph of this Section 16 over (ii) the difference between (a) an amount equal to interest at the rate of 8 1/2% per annum on the amount of any federal income

tax paid by the Lessor on account of the disallowance or inability to claim the Depreciation Deduction on such Unit and (b) the amount of any interest to which the Lessor would be entitled in connection with the refund of any tax paid on account of such disallowance or inability to claim; provided, however, that if the amount calculated in accordance with clause (ii) exceed the amount calculated in accordance with clause (i), the Lessee shall pay such excess to the Lessor promptly on demand.

The Lessee's and the Lessor's agreement to pay any sums which may become payable pursuant to this Section 16 shall survive the expiration or other termination of this Lease.

SECTION 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligations on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 10% per annum on the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

SECTION 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified

mails, first-class postage prepaid, addressed as follows:

- |                          |   |
|--------------------------|---|
| (a) if to the Lessor, at | FCB LEASING LTD.<br>504 Totten Pond Road<br>Waltham, Massachusetts 02514  |
| (b) if to the Lessee, at | Chicago, Milwaukee, St. Paul<br>and Pacific Railroad Company<br>516 West Jackson Boulevard<br>Chicago, Illinois 60606 |

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

SECTION 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

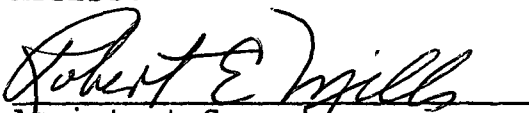
This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the units and supercedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

SECTION 20. Execution. This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this lease is dated as of December 13, 1973, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

SECTION 21. Governing Law. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

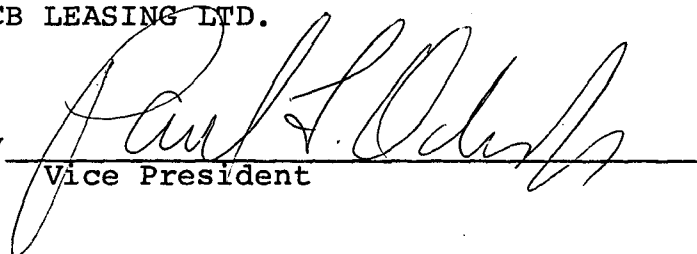
IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

ATTEST:

  
Assistant Secretary

FCB LEASING LTD.

By

  
Vice President

CHICAGO, MILWAUKEE, ST. PAUL AND  
PACIFIC RAILROAD COMPANY

By

\_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

STATE OF Massachusetts  
COUNTY OF Suffolk ) SS

On this 21st day of December, 1973, before me personally appeared Paul W. Decker Jr., to me personally known, who being by me duly sworn, says that he is a Vice President of FCB LEASING LTD. that one of the seals affixed to the foregoing instrument is the corporate seal of said bank and that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank as trustee as aforesaid.

Nancy Denise Jennings  
Notary Public

My Commission expires: Aug 18, 1978

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 1973, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

My Commission expires:

SECTION 20. Execution. This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this lease is dated as of December 13, 1973, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

SECTION 21. Governing Law. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

FCB LEASING LTD.

ATTEST:

By \_\_\_\_\_  
Vice President

\_\_\_\_\_  
Assistant Secretary

ATTEST:

*J. J. Tamm*  
Assistant Secretary

CHICAGO, MILWAUKEE, ST. PAUL AND  
PACIFIC RAILROAD COMPANY

By *R. K. Goodwill*  
Vice President

STATE OF )  
 ) SS  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1973, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is a Vice President of FCB LEASING LTD. that one of the seals affixed to the foregoing instrument is the corporate seal of said bank and that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank as trustee as aforesaid.

\_\_\_\_\_  
Notary Public

My Commission expires:

STATE OF Iu )  
 ) SS  
COUNTY OF Cook )

On this 19<sup>th</sup> day of Dec, 1973, before me personally appeared R. F. Kratochwill, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Rand L. Stenzel  
Notary Public

My Commission expires: Nov. 20, 1976

CERTIFICATE OF ACCEPTANCE  
Under Lease of Railroad Equipment  
dated as of December 13, 1973

The undersigned, being the duly authorized representative of FCB LEASING LTD. (the "Lessor") and CHICAGO MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY (the "Lessee"), hereby certifies that the following Units of railroad equipment, referred to in the Lease of Railroad Equipment dated as of December 13, 1973 between the Lessor and the Lessee:

Description:

TOTAL NO.  
Of UNITS

LESSEE'S IDENTIFYING  
NOS.

DATE

have been duly delivered by WHITEHEAD & KALES COMPANY, Manufacturer, to the Lessee and have been duly inspected and accepted by the undersigned on said dates on behalf of the Lessee as conforming in all respect to the requirements and provisions of the Conditional Sale Agreement dated as of December 13, 1973 and the Lease.

The undersigned further certifies that at the time of its delivery to the Lessee each Unit of railroad equipment covered by this Certificate was properly marked on each side thereof with the legend provided in Section 4 of the Lease.

DATED:

\_\_\_\_\_  
Duly authorized representative of  
FCB LEASING LTD.

and

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC  
RAILROAD COMPANY

SCHEDULE A

<u>Quantity</u>	<u>Type</u>	<u>Lessee's Road Numbers</u>	<u>Unit Purchase Price</u>	<u>Total Purchase Price</u>
35(1)	Stack Pack Car Sets	MILU 633,000- 633,139, inclusive	\$4,006.50	\$ 560,910.00
66	Bi-Level Auto Racks	(2)	7,230.00	477,180.00
65	Fully Enclosed Tri- Level Auto Racks	(2)	20,250.00	1,316,250.00

- (1) 4 Stack Pack Contains Equal One Stack Pack Car Set  
(2) Lessee's Road Numbers not available until after manufacture